

### **REMARKS**

Claims 1 and 5 are pending, with claim 5 withdrawn from consideration.

The specification has been amended to make minor changes clarifying the production of mistletoe lectin extract. Applicants maintain that these changes find support in the original filing as well as Korean Patent Application Nos. 2000-83383 and 2001-0061118, and that no new matter is added.

Claim 1 has been amended to delete reference to solutions and instead recite "coating material" as supported by, *e.g.*, paragraphs [0022] and [0035]. The claim is also amended to recite that the binder consists essentially of mannitol, calcium-phosphate dibasic, and hydroxypropylmethylcellulose, as supported by, *e.g.*, paragraphs [0033], [5506], and/or [0060]. The claim is further amended to recite corn protein extract in place of zein, as supported by, *e.g.*, paragraph [0058].

No new matter has been added.

In view of the following remarks, reconsideration is respectfully requested.

### **Objections to the Specification**

The specification was objected to for allegedly improper incorporation by reference under 37 C.F.R. 1.57. However, the rule prohibits only incorporation by reference of **essential material** by reference to foreign applications. 37 C.F.R. 1.57(c). Applicants respectfully submit that no essential material is incorporated by reference to the Korean applications, and respectfully request withdrawal of the objection.

**Rejection Under 35 U.S.C. § 112, First Paragraph**

Claims 1 was rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement for reciting mistletoe lectin extract and zein protein extract, because the preparation of these materials are allegedly insufficiently described. Applicants traverse the rejection.

The preparation of mistletoe lectin extract is amply described in the specification, Example 1.

Claim 1 is amended to recite corn protein extract in place of zein protein extract, so that this aspect of the rejection is moot.

For these reasons, Applicants request reconsideration and withdrawal of the rejection.

**Rejection Under 35 U.S.C. § 112, Second Paragraph**

Claim 1 was rejected under 35 U.S.C. § 112, second paragraph, as indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, because the claim recited a pharmaceutical formulation comprising solutions.

Applicants traverse the rejection: the claim has been amended to remove reference to the solutions.

**Rejection Under 35 U.S.C. § 103(a)**

Claim 1 was rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Ruepp et al., German Patent Publication No. DE 19639375 ("Ruepp") in view of Margolin et al., U.S. Patent Publication No. 2002/0045582 ("Margolin"), Cook, U.S.

Patent No. 5,567,438 ("Cook") and Green, U.S. Patent No. 4,026,851 ("Green").

Applicants traverse the rejection.

"It is elementary that to support an obviousness rejection, all of the claim limitations must be taught or suggested by the prior art applied and that all words in a claim must be considered in judging the patentability of that claim against the prior art." *Ex Parte Burgess*, Appeal 2008-2820, slip op. at 6 (BPAI, Feb. 9, 2009) (citing *In re Royka*, 490 F.2d 981, 984-85 (CCPA 1974) and *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970)).

The rejection relies on Ruepp to disclose dry extracts of mistletoe and for the fact that mistletoe contains lectins. However, the machine translation of Ruepp merely discloses a dry extract of the plant, not the claimed mistletoe lectin extract. As disclosed in the present specification (¶¶ [0053] to [0054]), a mistletoe lectin extract may be prepared by grinding plant tissue in water, followed by centrifugation, filtration, and purification on an asialofetuin-Sepharose column. The rejection lacks support for a contention that the dry mistletoe extract of Ruepp is a lectin extract, i.e., is enriched in lectins.

The remaining references are not relied upon to teach mistletoe lectin extract and otherwise fail to cure the deficiency of Ruepp. Accordingly, Applicants respectfully submit that claim 1 is nonobvious over the references as applied, and request reconsideration and withdrawal of the rejection.

**Conclusion**

For the foregoing reasons, allowance of the application is respectfully requested. If there are any questions concerning this response, Applicant's undersigned representative can be reached at the number below.


The Director is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17 and 1.20(d) and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

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